

**The New Nativism: Immigration and
Social Policy Conflicts**

Panelists:

- ❖ **Linda Bosniak (School of Law, Rutgers-Camden)**
- ❖ **Peter Guarnaccia (Human Ecology, Rutgers-NB)**
- ❖ **Jan Kubik, (Political Science, Rutgers-NB)**
- ❖ **Jamie Lew (Sociology, Rutgers-Newark)**

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**The New Nativism:
Immigration and Social
Policy Conflicts**

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On December 1, 2009, four Rutgers scholars participated in a roundtable discussion on the social and political manifestations of anti-immigrant sentiment today. Over the past few decades, millions of new immigrants -- from central and south America, southeast Asia, China, Japan and India, Africa and the Caribbean – have migrated outside their countries of origin, spurring debates and anxieties about immigration law, employment, schools and national security. What do responses to new immigrants look like today? Do they reflect a resurgence of older patterns of 'nativist' hostility, or are there new elements? What are the implications of resistance to new immigrants with respect to social policymaking such as education, health and law and what are the implications of this resistance for race and citizenship?

**IS NATIVISM A FORM OF
RACISM?**

Nativism is an ethnocentric belief that native-born citizens should be favored over immigrants. One of the central questions panelists raised was: what enables nativism to pervade different aspects of society—including public discourse, policymaking, education, health and law—when we live in societies that claim to have moved beyond defining people by their racial or ethnic background? The participants agreed that the illusion of a post racial society itself contributes to the spread of nativist tendencies. Jan Kubik, Professor of Political Science at Rutgers University, noted, “as discourse becomes more civilized, offensive messages get buried in the seemingly politically correct discourse of the center.” Kubik argued there are several types of logics that can influence nativist thinking. The first is an economic logic which focuses on non-natives as targets of resentment for growing poverty rates or economic crises. Another logic revolves around perceived cultural differences which exaggerates difference through discourses of hate and emerges as an exclusionary form of nationalism. Political logic involves the expediency of scapegoating, and undergirds various groups’ use of nativist discourse to garner support as a form of rebellion.

**NATIONALISM,
ASSIMILATION AND
NATIVIST SENTIMENT**

Nativism often hides under the guise of civic nationalism, and nationalist values can make it difficult to acknowledge diversity. Panelists noted that the result has often been the compulsory assimilation of immigrants into mainstream culture. This move, titled “straight-line assimilation,” is often used as a means to normalize minority populations, forcing the adoption of the dominant culture and language. For instance, in the United States, in the name of civic nationalism, schools have practiced a form of nativism by offering instruction only in English, essentially excluding non-native English speakers from full participation in education.

However, Jamie Lew, Associate Professor of

“As discourse becomes more civilized, offensive messages get buried in the seemingly politically correct discourse of the center.”

--Jan Kubik

Sociology at Rutgers-Newark, pointed out that in the context of changing demographics and economics, contemporary immigrants are gaining important social and linguistic resources from their immigrant ethnic networks and enclaves, which ultimately aid in the economic mobility of first-generation immigrants and



(l to r): Panelists Peter Guarnaccia, Jan Kubik, Linda Bosniak, and Jamie Lew

their children. In the midst of these findings, it is increasingly important for education policy to challenge the deeply-held beliefs of assimilation as an inevitable phenomenon, and implement a critical education policy that recognizes the significance of multicultural and multi-linguistic pedagogy, acknowledges variabilities within ethnic networks, and underscores historical benefits as well as limitations of ethnic enclaves and economy.

While ethnic enclaves are a significant source of support for immigrants, offering peer support, they should not be overstated. Peter Guarnaccia, Professor of Human Ecology at Rutgers-New Brunswick, noted that within ethnic enclaves some individuals remain close to their cultural roots, while others pursue stronger forms of assimilation. Even from the point of view of immigrant status, there are families where some individuals are U.S. residents, others are U.S. citizen, and others are undocumented. This diversity suggests that the everyday experiences of immigrants, as well as their exposure to nativist policies or discourse, is complex and nuanced and depends on a variety of contexts and conditions.

FRAGMENTED IMMIGRATION POLICIES AND THE PROBLEM OF NATIVISM

Linda Bosniak, Professor of Law at Camden, pointed out that jurisdiction gaps and overlaps in immigration policies are a part of the problem of nativism in U.S. In other words, “there are battles about where the domain of immigration regulation starts and where it ends.” As the law has developed, noncitizens enjoy very little in the way of rights in the immigration control setting and far more protection outside the immigration context itself (e.g., in regard to rights

“There are battles about where the domain of immigration regulation starts and where it ends.”

--Linda Bosniak

associated with contract, property, criminal due process). For this reason, deciding whether a given government action constitutes 'immigration regulation' or simply regulation of persons who are immigrants matters significantly.

Although immigration laws are usually enacted at the federal level, states often intervene by creating laws that regulate immigrants through social and economic policy. Examples are laws that penalize landlords for housing immigrants or that privilege the marital status of U.S. citizens. By inserting states into the immigration domain, legislators have contributed to the emergence of nativist policies.



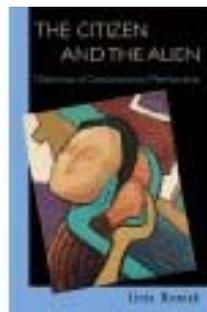
Jamie Lew, Department of Sociology, Rutgers Newark



Peter Guarnaccia, Department of Human Ecology/Institute of Health, Health Care Policy and Aging Research, Rutgers-New Brunswick

On the other hand, the fragmented nature of federal and state regulation of immigration has also produced opportunities for more inclusive policy. Peter Guarnaccia noted that while the federal government fails to provide health care coverage to undocumented immigrants, some states have developed an integrated system of charity hospitals, which are able to provide some relief to immigrants.

In addition to questions about *who may be regulated*, the status of *what* is being regulated can also be unclear. For instance, Jan Kubik described the recent Swiss popular vote to ban the construction of minarets as an effort to limit the construction of mosques, even though that is not how the legislation was framed. The panelists also pointed out that the rights of immigrants and of citizenship are not clearly defined. Linda Bosniak gave an example that occurs all too often in the United States. When a non-citizen who has committed no crime other than an immigration violation is ordered to be deported, he or she can be held with criminal offenders in jails or prisons for months or even years. Thus, the line between criminal and non-criminal offenders becomes blurred. The production of the “grey zone” of immigration is replicated in current health care reforms, which exclude undocumented immigrants, making it less likely that their children – some of whom are U.S. citizens – will access health care services.



The Citizen and the Alien, by Linda Bosniak

What positive steps forward can governments and individuals take when there is a great deal of inconsistency in the treatment of immigrants? Peter Guarnaccia pointed out some obvious areas of inequality that can be rectified. Currently, immigrants are placed in different categories of rights according to their visa status (or lack thereof). Immigrant status gives immigrants the benefit of paying taxes in the United States, but not the right to vote. All immigrants have the right to donate their organs, but only 5 percent of available organs will eventually go to immigrants. Through more thoughtful consideration of the broader implications of nativist thinking, governments and individuals can work to take positive steps to more inclusive policies.

From anti-Muslim policies in France to anti immigrant discrimination within employment and healthcare in United States, panelists concurred that nativist responses to new immigrants vary widely but that nativist ideas frequently have dangerous consequences for the lives of immigrants. They addressed the lack of a language of response to confront nativism and the difficulty in making nativist motivations and policies visible. The first step in combating nativism will be to work on formulating a language to help expose what often lies beneath nationalist rhetoric and



Jan Kubik, Department of Political Science, Rutgers-New Brunswick



Linda Bosniak, School of Law, Rutgers-Camden

policies in education, health and law—to enable both the victims of nativist sentiments and those who have remained silent to have a more powerful and shared language to combat “new nativism.”

Drucilla Cornell Delivers Lecture On “Indigenous Values And The Law: Ubuntu And The South African Constitution”

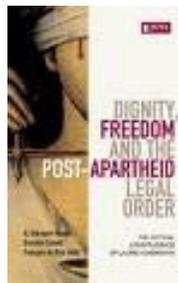
On December 3, 2009, in a talk that focused on the intersection of law, political philosophy and ethical theory, Drucilla Cornell, of the Rutgers-NB Departments of Political Science, Women and Gender Studies, and Comparative Literature, discussed “Ubuntu,” a humanist philosophy that has been crucial to post-Apartheid South African jurisprudence. As Cornell explained, the law in Ubuntu does not rest on the ideas of individuality and the social contract, as it does in Western liberal thought. Rather, Ubuntu imagines human beings as intertwined in a field of ethical and social relations. According to Ubuntu, we come into the world with an obligation to others, and “a person is a person because of and through other people.”

Ubuntu has helped reshape criminal and private law in the new South Africa. According to the principles of Ubuntu, criminal acts are harmful not just to an individual but also to the community at large, and the function of the law is to get opposing parties to recognize each other’s humanity and to restore the community. Furthermore, in Ubuntu there is no such thing as pure freedom. Freedom and obligation are two sides of the same coin. For example, in cases where a shanty town develops on someone’s private property, constitutional judges have used Ubuntu principles to balance two competing claims: all people have a right to protect their private property, and everyone has a right to build a home.

In his response to Cornell’s talk, Stéphane Robolin, Rutgers-NB

Department of English reminded us that Ubuntu is a term that has been used widely and imprecisely, often alongside simplistic notions of multiculturalism. Cornell’s discussion offered a welcome corrective to these mainstream notions about Ubuntu, Robolin argued, and it revealed that the problem is with crass multiculturalism rather than with Ubuntu as a concept. Cornell agreed that the concept of Ubuntu has been exploited and put in the service of neoliberal capitalism, but she also pointed out that Ubuntu has been effectively deployed within anti-capitalist movements such as the shantytown dwellers’ movement in South Africa.

“You’re a human being before you’re a citizen in the new South Africa,” Drucilla Cornell explained. Too often, we think of law only in terms of private rules rather than in terms of the best strategies for achieving social justice. For Cornell, the intellectual heritage of Ubuntu presents a powerful alternative to rigid and abstract notions of law. Ubuntu helps to bring “grace and compassion to the law” and to prioritize “good neighborliness and shared concern.”



Dignity, Freedom and the Post-Apartheid Legal Order, Drucilla Cornell, Jaco Barnard-Naudé, & François du Bois, eds.



Drucilla Cornell and Stéphane Robolin

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